June 6, 1973

Interim Report Relating to the Letter of Intent and Certain Related Documents Submitted by Bernard H. Borman

I. Meetings - Meetings altogether totalling approximately 11 hours were held May 16,22,24,and 31, and June 8. Messrs. Forbes, McCall, Perera and Borman were present at all meetings. Mr. McCann was present at all but the first meeting and last meetings. Mr. Chouinard at all but the 3d meeting. Mr. Roudebush was present at the first meeting, Mr. Kelso at the third meeting, and Mr. Sampson at the fourth and fifth meetings. The committee functioned without Chairman, Secretary or other officers.

II. Procedures - The committee process involved a general review of the proposed third submission of the Letter of Intent and some other Park Plaza questions generally related to that document. Committee members generally acknowledged the need to continue with consideration of the Memorandum of Understanding relating to the Common and Garden and the new bond financing bill (H4066) as soon as possible. Committee members generally acknowledged a further need to evaluate the Developers' feasibility studies in relation to the documentation. Some apparent gaps in the documentation we reviewed may be covered in other materials we did not review, but we are not aware of this now.

III. Interim Conclusions - Subject to revision after final review of all relevant documents, I reached the following tentative conclusions based on the draft documentation presented to date:

1. The documentation does not contain adequate assurances that the Project will be developed within the reasonable parameters of public expectation.

When private property including viable businesses are taken by eminent domain for transfer to other private ownership for other business users, our government must demonstrate firm assurances that the publicly stated purposes of the taking can and will eventually be achieved.

A. The deposits are too small in relation to the magnitude of this project. A developer is entitled to a reasonable return on his investment, presumably a higher return is reasonable in higher risk situations. However, where eminent domain is involved, the likelihood that the proposed project will reach fruition should be reasonably assured in order to justify use of the taking power in the first place; in other words, there should be relatively less risk and profit in a publicly supported project and correlatively greater loss to the developer in the event of non-performance.

In this case, the developer's risks are defined in terms of the expenditures incurred to date, estimated at $400,000 to $700,000 and through the balance of the approval process, plus the security deposits of $1,000,000 for Stage A and an additional $500,000 for Stage B to guarantee future performance, (and an additional $1,500,000 should he fail to submit a plan for development of Parcels D and E under certain conditions at a later date, which really is not a "risk" as related to actual construction performance). In view of the financia and phased structuring of the Park Plaza proposal, the proposed financial risk of the developer at this stage is relatively minimal

and insufficient to give reasonable assurances of his performance.

The initial development of Stage A for hotel purposes is the only portion of the entire project which seems reasonably assured at this point. This hotel could well generate sufficient profits to pay for the developer's costs through the approval stage and for his deposits should he fail to develop any of the remaining parcels and still leave a satisfactory return on his hotel investment, which he will retain despite any defaults on the remaining parcels.

Thus, as soon as the hotel project is firm the developer has what amounts to a free option to develop the Park Square Area on an exclusive basis. (Parcels A, B, and C) for a minimum of seven years and (probably longer as pointed out below) because his failure to develop does not impose realistic cost incentives upon him.

The mere right of the BRA to seek other developers if BUA elects not to proceed with Parcels A or C or to submit a plan for Parcel D is not sufficient. At each stage of development the remaining parcels are less attractive to both BUA and any subsequently chosen developers. In other words, Stage A with its hotel in Parcel B seems the most attractive investment. Stages B and C with their more desirable location seem next in desirability. Parcel C with its much higher acquisition costs is third in order, and of course, no one has suggested there is any feasible proposal for the Combat Zone, Parcels D and E, at all.

The profit on the hotel and first garage is supposed to be sufficient to warrant and induce the subsequent development of Parcel A and the same ripple effect is to carry over to Parcel C. But, at any Stage, the developer can elect not to proceed further, keep his development to that date, absorb the loss of his deposit against his profit to that date and leave the less attractive parcels to the BRA and others. It is quite unlikely that a subsequent developer could be found to pay the higher land costs for Parcel C, for example, when BUA had decided not to proceed and when BUA already had the benefit of the leading "sweetener" in the project, namely, the hotel.

For those who argue that the hotel deal is not that "sweet", one may question whether there can be any development at all if the hotel does not generate a good return. Unequivocal conclusions are impossible unless the public is informed of more basic aspects of the economics of the hotel development.

The solution is to require that the developer guarantee available funds for the purchase of all of Parcels A, B, and C prior to start of work on Parcel B. This will link profits on Parcel B to the future of Parcels A and C and will increase the developer's financial risk to a point of a true inducement to proceed. Should he fail to do so, the BRA will then at least have the assurance of funds for the purchase of Parcels A and C (or C if BUA takes B too) so that the BRA can negotiate with other developers for the lesser parcels at more realistic costs related to the overall project.

While this approach obviously increases the developer's risk substantially, it must be remembered that the entire Park Plaza Project is based on this developer's feasibility studies. Many other real estate persons questioned the wisdom of assuming the risk of developing the entire Park Square area, but BUA deemed such development to be feasible and should not escape the full risk of performing their total proposal. To the extent that his ability to advance acquisition funds of this magnitude may be questioned, we have one more reason why the financial net worth of the developer is of critical significance in this project. While we are told the developer's net worth exceeds $10,000,000 no evidence of this has been made public and we have no idea how much of this is liquid. However, it does appear that the developer's net worth is not sufficient to carry the equity aspect of this project and that he will need a major "institutional" partner at an early stage. Who will this be?

B. The default clauses are unsatisfactory - BRA has generally caused the public to believe that the increasing security deposits will be forfeited if the developers do not build their proposed project. The language of the draft Letter of Intent does not support this conclusion. There are numerous excuses for non-performance which would permit the developers to recapture their deposits.

In the first place, the developers are not in default merely for failure to build anything; they are only in default if they fail to try in good faith to proceed with the project. In other words, the BRA and a court must find bad faith on the part of BUA in failing to complete the project before a default can exist for which the deposit might be withheld. A "good try" is all that is required to protect the developer's deposit.

Secondly, in order to retain the deposit, the BRA must prove in court the extent of the City's actual damages for failure to proceed (which could well be zero before acquisition according to those who oppose the project). Thus, the security deposit may not be liquidated damages to be retained by the City in the event of non-performance or even bad faith but may actually establish the developers maximum liability for non-performance, not his actual or minimum liability. In this sense, the wording of Section 6.8 of the Letter of Intent may make the so-called security deposit more beneficial to the developer than to the public.

It should also be pointed out that BUA will not be in default or lose the deposit if their failure to perform is due to any causes beyond BUA's reasonable control which might even include changes in Federal Reserve discount rates or simply failure to obtain a tenant or a mortgage, the very sort of risks the developer is supposed to be taking in standing behind his own market feasibility studies.

The solution is to provide that the security deposits will be forfeited automatically if the developer fails to build the project by the various staged deadlines, no matter what the excuse is, as the public has already been led to believe is the case.

C. The developer has other options - Not only do the so-called security deposit and default clauses work practically to give the developer an option rather than a penalty but the document contains several other express options. For example, on Page 2, Paragraph 1, the developer's obligation to perform is subject to the BRA's obtaining "unconditional approval" within"a reasonable time" so presumably the developer would have the option of staying or leaving at any time during the litigation which is expected by simply alleging that approvals were taking too long.

In dealing with real estate, the relative degree of options given each party will vary with the relative bargaining power of each party. In view of the potential gain and extreme value of this parcel of real estate, it would seem that the seller, rather than the buyer, should have the weight of balance in determining options. Also, if the developer should withdraw at an early stage, but after the City had done the requisite street and utility work, the developer would not be paying the estimated $3 Million for City cost of these items.

2. The Proposal lacks reasonably assured deadlines for performance.

The various deadlines for commencement of various activities are subject to unlimited delays for a multitude of reasons and there do not appear to be deadlines for completion of construction, at all. Ultimate performance is actually at the option of the developer as indicated above. Thus, each time one of these many possible excusable delays occurs the developer may continue his option on Park Square until the excuse is eliminated, if ever, no matter how long that takes. In sound real estate practice, you do not let someone tie up your property indefinitely; the developer's rights to proceed further must be subject to an absolute cut-off date for the various phases no matter what the excuse for delay. The project should not remain pending for decades.

In addition, the document contains several clause in which the parties clearly express the possibility of agreeing to future delays (e.g. Article I, Page 4, Paragraph 2). The use of such clauses will prohibit later public complaint that delays constitute "substantial" changes which are subject to review by other public bodies. To guard against unlimited delay, we suggest that if construction of the first Stage has not commenced by July 1, 1977, whatever the reason, the project should be abandoned and, similarly, no construction should be commenced after January 1, 1988,or at any earlier times which it is clear that the final phase in the first three parcels will not be commenced by January 1, 1988.

In Section 2.1, at the top of Page 7A is another clause permitting an unlimited delay in the process. There is no time limit for completing the Land Disposition Agreement although the parties "expect" it will be done in 4 months, but if the LDA takes longer, then the Schematic Design may come in more than 6 months after the building study. On Page 6, the building study does not come in until 3 months after unconditional approval of the plan under Chapter 121B which probably includes litigation.

It should be noted that a claim of default as to one stage does not give the BRA any remedies as to any other stage in which work has commenced. Neither "work" nor "commence" is defined in Section 4.1, so, for example, merely doing some bulldozing in Stage B would be sufficient to eliminate the forfeiture of Stage B rights in connection with a serious Stage A default. To make this concept forceful, commencement of construction should be defined as the pouring of concrete for foundations. (see Page 19)

3. Proper procedures for design and environmental review are not specified.

In response to a multitude of complaints about the potential impact of this project upon the ecology and the residential and business environments of nearby areas, the BRA has stated it will assure a meaningful design review process to protect the environment which will involve respected, independent architects and civic organizations. It is thus presumed, for example, that if subsequent environmental studies should dictate a significant relocation or reduction in height of one of the five towers (taller than the First National Bank of Boston) between Charles and Arlington Streets, then these modifications would somehow be achieved through the design review process involving some independent consultation. The BRA has indicated it will consider alternatives, so one might presume that the eventual result could be significantly altered from the original conceptual design on which the selection of these developers was based. A review of the draft documentation reveals these difficulties:

A. Design Review -- Guarantees of outside participation in the design review process do not appear anywhere in the documentation. The subject of outside review by the independent Design Review Committee review is mentioned only once as an expression of intent in the Supplementary Letter. The Civic Advisory Committee's participation is not mentioned at all in reference to design review (e.g. see Page 10). Since the review process is regarded as critical to the initial acceptance of the project at this time, these procedures and guarantees for design review cannot be covered in one vague sentence expressing intentions and must be clearly specified. The BRA has indicated it would be more specific about these procedures in a future memo to the committee which would not, in that form, be binding upon the developer or the BRA. The first draft of this critically important document was first submitted to us June 6, 1973.

B. Environmental Review - This subject and the related, phased Environmental Impact Statement, are not mentioned at all. Again, there is merely a vague reference to "environmental considerations" in the Supplementary Letter Agreement (page 3). Incidentally, the Civic Advisory Committee has approved a written proposal specifying its role in the design and environmental review process, which is under consideration by BRA while, BUA and Mayor have not yet accepted or rejected this suggestion.

C. Time Periods for Review - Review of the initial Building Study and

subsequent Schematic Designs are the essence of the design and environmental review process. Yet, Sections 2.1 and 2.3 require that the BRA complete its review within 15 working days after the developer submits these items. Past experience gives no reason to believe that the BRA can do the requisite, thorough job of review in so short a period, much less allowing for consultation with independent forces such as the Design Review Committee, Civic Advisory Committee and public at large (all in 15 working days which could occur without advance notice in the Christmas holiday or summer vacation seasons, for all we know).

Director Kenney has responded by saying the 15 working day period is not so important, the BRA and independent architects will be getting periodic previews of the intended submission but this preview process is only vaguely described and does not involve the public (see Page 11).

For example, Saratoga Associates, the BRA's current environmental consultants, have indicated it would take a minimum of 30 days after submission of final designs to conduct a wind study, not to mention the time required for BRA and public synthesis of the wind study report thereafter. BRA has responded orally by saying it would somehow start wind tests right after BRA approval although the final building study would not be due until at least 90 days thereafter and perhaps much longer.

Note that wherever time periods are specified for the developer's performance, there are generally a series of permissible excuses for delay, but in the case of this 15 day time limit upon BRA review, no delay or excuse is permitted whatsoever. In other words, a casualty in the Developer's or architect's office would be an excusable delay but a casualty delaying performance of the BRA would not be an excuse in determining this 15 day period.

D. Bargaining Power - As the developer gets further into the project, first building the more profitable, less risky portions, and then approaching the greater risk areas, his bargaining power increases immensely in the design review negotiation as it gets harder and harder for the BRA to find another developer. Thus, it becomes relatively simple for the developer to reject changes requested for design reasons or environmental protection.

The significance of BRA premises about the future importance of design and environmental reviews will, in actuality, be largely determined by economic factors, but no evidence has been presented on these cost parameters of review. In other words, the inference is that we shouldn't worry about the impact of five towers in the Park Square area because if studies dictate otherwise, changes will be made, but we have no evidence about what major changes would be economically acceptable to the developer.

E. Selection of Architects - In Section 2.1 at the bottom of Page 7 the contract states that another principal architect may not be chosen without the consent of the BRA "which consent may not be unreasonably withheld." In this context there really is no standard of determining what would be a reasonable rejection of another architect so contractually it would be very risky for the BRA to make determinations of this sort. If the BRA truly has

absolute control in design review, it must have an absolute right to reject a specific architect, a matter far more important than any other aspect of the design review process.

4. Provisions relating to valuation of parcels to be taken are ambiguous and unclear.

A. Assemblage - Page 24 of the Letter of Intent emphasizes that the developer will pay fair market value based upon the lot by lot valuation, valuing each separate plot of each individual owner independently of its relationship to any other lot. Thus, the vastly increased value of the assembled Park Plaza project will accrue to the developer without cost. This is customary in Urban Renewal projects, but this tremendous built-in profit should not be overlooked in considering other proposed cost benefits to the developer such as low interest, bond financing and regulated real estate tax payments mentioned below. The fact that the developer is being asked to take some risks in the project is justified by this substantial purchase price saving he is realizing in the difference in the price he will actually pay for the various separately owned lots and the actual value of owning the entire 40 acre parcel. In particular, Page 24 states that the present zoning regulations applicable to these various lots will be used in determining valuation while the Urban Renewal Plan will greatly increase the permissible building area far beyond what would ordinarily be permitted under ordinary zoning.

B. Streets - It has been generally reported that the developer will pay approximately $3,000,000 for the streets being acquired from the City which are now to be used for building purposes in the revised street layout. However, this $3,000,000 purchase price is no where mentioned in the Letter of Intent or other documents reviewed by this subcommittee. Since the streets, themselves, are odd shaped and virtually unbuildable under current zoning it may well be that a fair market appraisal on this basis would determine that the streets were virtually worthless and the developers would under the language of the Letter of Intent be paying virtually nothing for the streets. (The purchase price of streets should not be confused with the separate $3,000,000 subordinated payment required of the developer over 20 years in addition to the purchase price.)

C. Valuation - On Pages 15 and 16 of the Letter of Intent, there is extremely confusing language about the price which will be paid for the acquisition of Parcels D and E. There is confusing language suggesting that the price to be paid by the City to the current owners might differ from the price to be paid by the developer in purchasing from the government. For example, the developer will never be required to pay "in excess of fair market value at the time of the taking unless the owner has made every effort to maintain the highest use of his property" in Parcels D and E. Obviously, there can be tremendous argument over whether or not an owner has made such effort. For example, one might allege right now that many owners are not making the highest use of property in

the Combat Zone. Furthermore, an owner could hardly be expected to make major improvements, such as replacing a heating plant, while the possibility of a taking is imminent in the Park Plaza development. Thus, the possibility of a taking reduces the likelihood of improvements and the failure to make improvements can reduce the price which the developer may be required to pay the City even-though the City may or may not have paid a higher price to the owner.

D. Appraisals - On Page 28, the developer is given the right to consult in the selection of appraisers. The City Council attempted to put in language asserting that the owners' would receive fair cash value for their property according to customary appraisal procedures, but clearly the selection of the appraiser, himself, can have a most important bearing upon the eventual determination of value. In addition, the BRA may not make an offer to any current owner without the prior approval of the developer and there is no requirement that the developer may not unreasonably withhold his consent. Page 28, thus, illustrates two recurring problems in the Letter of Intent, namely, when Governmental approval is required from the BRA or otherwise, this approval is frequently subject to a standard of reasonableness, that is, such approval may not be unreasonably withheld by the BRA or the governmental agency but where the approval of the developer is required for a particular matter, such as the offering price, no such standard of reasonableness is inserted, and, therefore, the developers may arbitrarily withhold his approval of an offering price, in his discretion; and, secondly, in several places we have been advised that confusing language was inserted by the City Council, presumably to safeguard the public's interest, but while the intention was valuable, the language selected to accomplish the apparent intent was inadequate to close all loopholes.

5. The Letter of Intent and related documents do not specify even approximately the amount of real estate taxes, or payments in lieu of taxes, by the developer.

Chapter 121A - The BRA has alleged that it will now require the developer to qualify under Chapter 121A as a six percent limited dividend entity in order to develop certain listed elements of the project, namely, one hotel, one high rise office tower, one principal department store, one parking garage and all residential units. The BRA alleges that it has inserted this requirement in response to many public complaints that the developer will be making an inordinate profit on this project. However, it is just as likely that the bondholders may prefer this kind of tax protection available from Chapter 121A as institutional lenders do not customarily seek more than 6% returns when coupled with tax shelters. Actually, the tax shelter aspect increases the usual return to approximately 10% to 12% which is reasonable for such investments. Thus, rather than requiring Chapter 121A merely to protect the public, the guaranteed tax protection may well be more beneficial to the investors.

The overall impact of Chapter 121A must be evaluated in terms of City-wide applicability, that is, given that this parcel will be paying less real estate taxes than competing, privately owned parcels,

how can one expect a nearby privately owned lot to be developed on a competitive basis with parcels under tax subsidy in Park Plaza.

It also should be noted that a developer would do well to earn 10% on his department store. Often the major tenant is a breakeven deal for a developer, intended to serve as an anchor for the higher profit small spaces which will not be subject to limited return.

In addition, the Supplementary Letter specifically states that the developer's obligation to construct the hotel under Chapter 121A is "dependent upon the present Federal income tax laws relating to real estate tax shelters remaining substantially as at present." However, Secretary Schultz has recently proposed a number of changes in the treatment of tax sheltered investments and the adoption of any one of these probably would eliminate the obligation of the developer to proceed under Chapter 121A as to the hotel.

B. Payments - The developer will have an absolute right under Page 26 of the Letter of Intent to approve all payments in lieu of taxes under Chapter 121A and no standard of reasonableness in exercising this approval is required. It also should be pointed out that the City of Boston is the only municipal government in Massachusetts which is not subject to State review in its Chapter 121A concessions. In addition, the BRA has agreed that 121A will not be required as to any portion of the development for which it does not process an application by the developer within six months after submission.

The separate $3,000,000 payment which the developer will make over a 20 year period is not subject to any personal liability on his part and is subordinated to all mortgage financing.

C. Relocation - While the City Council language on Page 32 of the Letter of Intent indicates a desire that first preference be given to present occupants, it was emphasized that this had little significance in terms of legal protection for the current occupants since the rents may be too high for them, the credit rating may be unsatisfactory or the developers may otherwise chose to question their reputation of other factors. In this area, the Letter of Intent seems to give the developer more reasons for declining to accept a current occupant than are permitted under the Urban Renewal Plan.

On Page 33, the developer recognizes the BRA's intention of making relocation payments in accordance with the highest Federal standards applicable at the time the project approval was first sought, presumably December, 1971. However, if there should be substantial increases in benefits for relocation at some time during the course of this project, then the developer would only pay one-half of 1971 standards and all the remaining balance would be payable by the City of Boston.

6. The Letter of Intent and related documents do not require an interim plan for preservation of the on-going useage of Park Square during early phases of Park Plaza construction.

Since the Park Plaza Development is scheduled to continue for many years, some consideration must be given to the continuing use by current occupants to avoid further "blighting" which will be produced by the construction of the new area and the impending takings by eminent domain. The BRA has presented no such plan, and, obviously, the

the developer, himself, has no obligations regarding this interim problem under the Letter of Intent or otherwise.

7. The Letter of Intent and related legal contracts between the BRA and Developer are not part of the approved Urban Renewal Plan and may be changed at any time by the developer and the BRA without any public review by any governmental body.

BRA states that approval by the Commonwealth's Department of Community Affairs must be "unconditional," and the developer indicates that he is not required to go forward until there has been unconditional "approval" (see top of Page 40 of Letter of Intent). All that the State approves under Chapter 121B is the Urban Renewal Plan, itself. The supporting documentation such as the Letter of Intent, the Supplementary Agreement and the Memorandum of Understanding relating to the Common and Garden are not part of the Plan. Items such as the so-called Environmental Impact Statement, appraisals and relocation are covered under separate statutes. Contracts must be made part of the Plan. Otherwise, the developer and BRA can mutually agree to any change of any provision at a time during the course of the project and there will be no public review (not even a HUD review as would be the case in a typical urban renewal project).

Page 19 of the Letter of Intent indicates that the Land Disposition Agreement and other matters may be subject to State approval, which, incidentally, cannot be unreasonably withheld; since BRA and the developer can also change this particular contract clause, the State would have to be very careful that a condition of its approval of this project was that this clause could not be changed, yet the BRA says that no conditions can be attached to the DCA approval. There certainly is no experiential standard for determining how the Commonwealth could have been held to have been unreasonable in withholdi its approval of a Land Disposition Agreement.

Further, the Letter of Intent, is, itself, merely a transitional document to be superseded by the Land Disposition Agreement with the strong likelihood of more changes before the actual operating relationship is established.

The first double spaced paragraph on Page 23 of the Letter of Intent indicates a typical situation in which the BRA and developer have already agreed that some mutual changes in the current proposal are quite conceivable (in this case the phased development of property acquisition) and the public will have no right of review or complaint in case such alterations are made; by pointing out the possibility of such changes in the Letter of Intent, the BRA and developer would later argue that no one could then complain about such changes being unforseen or "substantial."

On the other hand, Section 6.5 of the Letter of Intent indicates that any change whatsoever made by the BRA in the Urban Renewal Plan will be regarded as "material" in so far as the rights of the [illegible] are

concerned. Many of the changes now being suggested by way of ancillary documentation, for example, the review role for the Design Review Committee or the Civic Advisory Committee might be considered changes in the Plan by the developer.

In a project of such magnitude extending over such a period of time, the prospect of a succession of changes collectively having a substantial impact must be assessed and public safeguards must be arrived at to guarantee that collectively such changes will not produce an altogether different project from that originally anticipated.

8. Zoning - On Page 8 of the Letter of Intent, the necessity of rezoning the Park Plaza area into planned development is mentioned. This is the same technique which has been most recently used in connection with the John Hancock Tower. Thus, there are no typical zoning controls over the Park Plaza area as are applicable to the balance of the City of Boston, but rather Park Plaza will be governed by the Urban Renewal Plan, itself, which has already been recognized as permitting some questionable density, height, massing, and other factors. The BRA has been asked to furnish information concerning the zoning "bonus" which will be available to Park Plaza in terms of the additional building area which will be permitted in this development in contrast to privately developed property. First indication is that a floor area ratio of 14 will be the average applicable ratio for the development compared to the floor area ratio of 10 which would otherwise be applicable under current zoning and would govern private development of this and nearby parcels. In other words, the Park Plaza developer may construct 40% more floor area in his Park Plaza acquisition than a competing developer nearby can use for a similar parcel without additional variances. This is one more subsidy available to this developer. Such zoning "bonuses" are deemed necessary to encourage development, but this is one way of saying that similar variances would be required to encourage development anywhere in the City. In other words, the City Zoning Code is deemed not to be satisfactory for encouraging development but the BRA can pick and choose in the use of the zoning code for those locations it chooses to develop. The City would have been better served in the past two years if the time spent on the Park Plaza Project by the BRA had rather been expended in planning for development of a proper zoning code for the City and district planning for the residential neighborhoods of Boston.

9. Miscellaneous -

A. Art Fund - The subcommittee suggests that the Civic Advisory Committee be permitted to review any uses of the 1% project art fund.

B. Colonial Theater - Although the Colonial Theater is technically excluded from the Park Plaza taking, nothing would preclude the developer from privately acquiring the Colonial Theater for use with its abutting urban renewal acquisition. Thus, provision should be inserted in the Letter of Intent so that if the Developer or an affiliate acquires the Colonial Theater site, the Developer will not be permitted to demolish the theater.

C. Investor Identification - On Page 34 of the Letter of Intent, the developer is required to disclose the identity of any "person which proposes to acquire a beneficial interest" in the venture. Again, the BRA's right to withhold consent to new beneficial owners must be exercised reasonably. The definition of "person" should be governed by HUD standards so that the actual person benefitting will be named, rather than some straw corporation, agent, trust, or other intervening fictitious ownership, and the BRA should have the same right to withhold approval as it would have in a HUD project.

D. Power - Who the actual investors are will be of critical importance since the option to develop Park Square will vest enormous political and economic power in the hands of the private developer for decades to come, could lead to their through the exercise of the power of eminent domain.

E. Ground Leases - The Letter of Intent permits the developer to take a ground lease for up to two years prior to acquisition of a fee ownership interest. This clause does not seem to have any practical useage in terms of the public interest, and the BRA has been asked to explain the purpose of this clause.

F. Bond Financing - The new BRA bonding bill does not clarify what happens to the ownership of the public parks in the project in case of a default on the related bond issues. While the bill indicates that the bondholders would not have a conventional mortgage lien, but rather would look to rentals as security, the fact is that various "public" aspects of the project such as the open plazas and park areas would not produce revenues that could serve as security.

Although the City's credit is technically not at stake in connection with these bonds, any Mayor would have to exercise some very difficult business judgements before he allowed any such projects to go in default for non-payment of rentals, since the City's practical credit rating would be at stake even if not legally involved.

The subcommittee did not feel able to review the technical provisions of Section 4.2 of the Letter of Intent and still must undertake a review of the bonding bill, itself.

10. Exculpatory - Review of the Letter of Intent and related documents is a technical, legal problem requiring a substantial amount of time which cannot possibly be preformed on a volunteer basis. This review can only be regarded as a superficial indication of a number of the problems inherent in this paper work. A full assessment of the public position in this contractual relationship cannot be done on a volunteer basis. In addition, I personally have many greater concerns about the project which are not listed here as not specifically germane to the Letter of Intent.

11. Conclusion - The paper work does not increase one's confidence in the BRA's ability to carry out the Park Plaza proposal. To the contrary, the three year history of the BRA's management of this project indicates that a $266 Million development in this sensitive location is simply too big for them to handle within the present limitations of the legal process and their own experience and competence.